

STATE OF NORTH DAKOTA

BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:)
)
)
North Dakota State Board of Medical)
Examiners - Investigative Panel A,)
)
Complainant,)
)
)
vs.)
)
)
Hunter A. Nicholas, M.D.,)
)
)
Respondent.)
)

**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

.....

On March 1, 2002, a Complaint was filed with North Dakota Board of Medical Examiners ("Board") by Mr. John M. Olson, special assistant attorney general, on behalf of the North Dakota State Board of Medical Examiners - Investigative Panel A ("Investigative Panel A"), requesting administrative action against the license to practice medicine in the State of North Dakota of Hunter A. Nicholas, M.D. The Complaint cites as grounds for administrative action violations of N.D.C.C. § 43-17-31. The Complaint was personally served on Dr. Nicholas on March 4, 2002.

Along with the Complaint, an Order of Temporary Suspension, a Notice of Hearing, and a document entitled Witness List and Exhibits, were served on Dr. Nicholas. The Board issued the Order of Temporary Suspension on March 1, 2002, under the emergency provisions of N.D.C.C. § 43-17-32.1. The Order of Temporary Suspension imposed an immediate suspension on Dr. Nicholas's license, to remain in effect until a final order issues from the Board on the

Complaint or until the Board otherwise terminates the suspension. The Notice of Hearing scheduled an emergency hearing under N.D.C.C. § 43-17-32.1 for March 13, 2002, in the Office of Administrative Hearings, Bismarck, ND. The document, Witness List and Exhibits, states the witnesses and documents to be presented at the hearing in support of the Complaint.

On March 7, 2002, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On March 11, 2002, the undersigned ALJ was designated.

The hearing was held as scheduled on March 13, 2002, beginning at 9:00 a.m., without the presence of Dr. Nicholas. Mr. Olson represented Investigative Panel A. In the absence of Dr. Nicholas, Mr. Olson asked the ALJ to proceed in default. The ALJ was marking Mr. Olson's exhibits in support of the default when Dr. Nicholas appeared. Dr. Nicholas was not represented by counsel at the hearing.

After a brief recess, during which Dr. Nicholas and Mr. Olson conferred, the ALJ reconvened the hearing. Mr. Olson informed the ALJ that Dr. Nicholas wished to waive his right to an evidentiary hearing. The ALJ explained to Dr. Nicholas that a Complaint is filed against him making certain allegations of violations of the law, and that he has a right to a hearing on the Complaint. The ALJ asked if Dr. Nicholas wished to waive his right to a hearing. He responded in the affirmative. The ALJ then asked Dr. Nicholas if he agreed that the allegations of the Complaint were true. Dr. Nicholas affirmed that essentially the substance of the Complaint was true.

The ALJ then took official notice of all of the exhibits of Investigative Panel A, exhibits 1-8, which support the allegations of the Complaint. Exhibit 8 is certain medical records of Dr. Nicholas obtained by Investigative Panel A under a Subpoena Duces Tecum issued March 11, 2002. Those

records are confidential, for the Board's review, only, and are sealed in a large envelope, marked as exhibit 8, and marked confidential. An exhibit list is attached to this decision.

In closing, based on Dr. Nicholas's waiver of the hearing and his admission that the allegations of the Complaint were essentially true, Mr. Olson made a statement regarding the basis for disciplinary action. He said that Dr. Nicholas was involuntarily committed under the mental health laws of the state of North Dakota and is currently beginning a regimen of treatment for chemical addiction and mental health evaluation at the South Central Human Service Center in Bismarck. He said that Dr. Nicholas was evaluated by a psychiatrist and determined to be unable to practice medicine at this time. He said that Dr. Nicholas has demonstrated a sincere interest in receiving treatment and evaluation and is likely to follow through with a program of treatment and evaluation. Therefore, Mr. Olson recommended the following disciplinary action:

1. That Dr. Nicholas's license to practice medicine in North Dakota shall be suspended immediately and indefinitely, until such time as Dr. Nicholas can demonstrate to the Board that he is sufficiently rehabilitated to enable him to again practice medicine in North Dakota. The burden of showing sufficient rehabilitation shall be on Dr. Nicholas to demonstrate by evidence satisfactory to the Board that he has met the requirements of rehabilitation in accordance with the recommendations of professionals treating and evaluating him.

2. That Dr. Nicholas shall pay all of the costs of this disciplinary proceeding as allowed under N.D.C.C. § 43-17-31.1.

Dr. Nicholas agreed that the disciplinary action recommended by Investigative Panel A is reasonable.

Based on Dr. Nicholas's waiver of the hearing and his admission that the allegations of the Complaint are essentially true, based on the exhibits officially noticed, and based on the

recommendation of Investigative Panel A, with which Dr. Nicholas agrees, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Dr. Nicholas is a physician currently licensed to practice medicine in the state of North Dakota.
2. Dr. Nicholas was previously granted license number 8767 by the Board.
3. License number 8767 was temporarily suspended under a Board Order of Temporary Suspension issued on March 1, 2002.
4. Investigative Panel A issued a Complaint against Dr. Nicholas on March 1, 2002.
5. A hearing on the Complaint and Order of Temporary Suspension was held on March 13, 2002, however, Dr. Nicholas waived his right to an evidentiary hearing.
6. Dr. Nicholas has admitted the allegations of the Complaint issued by Investigative Panel A on March 1, 2002, stating violations of N.D.C.C. § 43-17-31.

CONCLUSIONS OF LAW

1. Dr. Nicholas is licensed to practice law by the Board in the state of North Dakota under the provisions of N.D.C.C. ch. 43-17. By virtue of this license he is subject to disciplinary action by the Board under N.D.C.C. §§ 43-17-30.1 and 43-17-32.1 for violations of N.D.C.C. § 43-17-31.
2. Under the provisions of N.D.C.C. § 43-17-32.1, the Board may impose a temporary suspension against a license and it did impose a temporary suspension against license number 8767. Within the time limitations of N.D.C.C. § 43-17-32.1, the Board held a hearing regarding the temporary suspension and proposed disciplinary action against Dr. Nicholas pursuant to the Complaint filed against him by Investigative Panel A.

3. Dr. Nicholas has admitted to the allegations of the Complaint which states violations of N.D.C.C. § 43-17-31.

4. For violations of N.D.C.C. § 43-17-31 proven at a hearing or admitted, the Board may impose such discipline as it may find appropriate under N.D.C.C. § 43-17-30.1 and may impose other disciplinary action (costs of prosecution) under N.D.C.C. § 43-17-31.1.

RECOMMENDED ORDER

Based on the foregoing findings of fact and conclusions of law, and the recommendation for disciplinary action of Investigative Panel A, the ALJ recommends that the Temporary Order of Suspension against the license to practice medicine in North Dakota of Dr. Nicholas be terminated and that the Board issue an order adopting the recommendation of Investigative Panel A in its entirety.

Dated at Bismarck, North Dakota, this 14th day of March, 2002.

State of North Dakota
Board of Medical Examiners

By: _____
Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260